IN THE MATTER OF
CLEAR-CUTTING ON ECOLOGICAL RESERVES

REPORT

OFFICE OF THE OMBUDSMAN

Halifax, Nova Scotia

15 January 1991

The Complaint

This report concerns a complaint in regard to clear-cutting of certain virgin forest areas in Nova Scotia which had been identified as future ecological reserves.

The complainant suggested that clear-cutting had occurred with the knowledge of the Department of Lands and Forests.

The complainant further suggested that if this was true it represented "a major corruption of public trust on the part of some of this Department."

The complaint was based on a press release issued in August, 1990, by the Wilderness Committee of the Ecology Action Centre (Halifax) which stated in part: "It seems unpardonable that careful scientific research should have been treated with such wanton disregard."

The Investigation

The focus of this investigation has been directed to the administration of sites on Crown land after they had been recommended for ecological reserve status.

The investigation has not been directed to the general practice of clear-cutting in the forest industry nor to sites located on private lands.

I wish to record that my inquiry has not been impeded in any way by representatives of the government. On the contrary, officials of the Nova Scotia Museum and the Department of Lands and Forests have been most helpful and have provided free access to information on request.

Background

Some general background may be useful before turning to the specific complaint.

In the early 1960's eminent scientists from many countries had become alarmed by the growing evidence of pollution, extinction of plant and animal species, and general deterioration in the quality of the global environment. Their expressions of concern led directly to the formulation of a major international research project, the International Biological Programme (IBP), designed to study ecosystems on a world-wide scale. The study took ten years (1964-1974) to complete and involved scientists of nearly one hundred nations.

The International Biological Programme in Canada was endorsed by the Canadian Council of Resource Ministers, the Nature Conservancy of Canada, and the Canadian Institute of Forestry. A national committee of scientists appointed by the National Research Council of Canada provided general direction to committees of scientists in various regions, including the Maritime Provinces.

The IBP program of research consisted of several distinct components, one of which was to locate rare and endangered ecosystems, document these as fully as possible, and work toward their preservation. This component was referred to as the "Conservation of Terrestrial Communities Section of the International Biological Programme" (IBP-CT).

Field work in the Maritimes began in the summer of 1972, continued through the summer of 1973, and resulted in the publication of a comprehensive report in 1974 (Ecological Resources in the Maritimes, ed. P. M. Taschereau, 220 pp.).

The Report identified a number of ecosystems in Nova Scotia which were considered to be extremely rare and particularly endangered, and recommended

that they be protected in ecological reserves, legally protected natural areas where human influence would be kept to a minimum. These reserves did not exist at the time, but when established it was anticipated that they would serve as outdoor laboratories for scientific research, as wilderness classrooms for training in wildlife biology, forestry and resource management, and would provide a continuing standard against which to measure changes in the environment caused by humans.

The Report recognized that until such reserves had been established, the sites identified for preservation would have no legal status. Accordingly, the report urged that the government enact legislation to establish reserves as soon as possible.

In 1980, the Legislature of Nova Scotia passed An Act to provide for the Preservation, Regulation and Study of Archaeological and Historical Remains and Palaeontological and Ecological Sites. This statute, commonly referred to as the Special Places Protection Act, came into force in March, 1981.

The Special Places Protection Act, provides for "the preservation, protection, regulation, acquisition and study of ecological sites which are considered important parts of the natural heritage of the Province". In particular, the Act was designed to "preserve, regulate, acquire and study those ecological sites that (i) are suitable for scientific research and educational purposes, (ii) are representative examples of natural ecosystems within the Province, (iii) serve as examples of ecosystems that have been modified by man and offer an opportunity to study the natural recovery of ecosystems for such modification, (iv) contain rare or endangered native plants or animals in their natural habitats, (v) provide educational or research field areas for the long-term study of natural changes and balancing forces in undisturbed ecosystems...."

The administration of the Special Places Protection Act is the responsibility of the Minister of Education acting through the Nova Scotia Museum Complex. The Act provides for an Advisory Committee on the Protection of Special Places consisting of the Director of the Nova Scotia Museum Complex, one representative from each of the Departments of Education, Environment, Lands and Forests, and Mines and Energy; one representative of the Union of Nova Scotia Indians; and, five other members appointed by the Cabinet. This Committee is empowered to advise the Minister in regard to selection, regulation and other matters relating to ecological sites.

Since 1981, three forest sites have been officially designated as ecological reserves. Two of these reserves are on Crown land and one is on private property.

Candidate Ecological Reserves

The IBP report identified sixty-nine sites which should be considered for ecological reserve status. Additional areas were later identified by staff of the Nova Scotia Museum and the Department of Lands and Forests, so that there are now over one hundred sites. These are referred to as "Candidate Ecological Reserves".

Approximately half of the potential reserves originally identified in 1974 were forests, mostly of the old-growth type. Some trees on these sites were over 350 years old. The number of virgin forest areas selected in Nova Scotia would appear to be disproportionate when compared to other ecosystems but the relatively large number is explained by the fact that the IBP teams discovered that old-growth forests in the Maritimes were exceptionally rare (few stands were found in New Brunswick and only two were known to exist in Prince Edward Island). They were considered to be particularly vulnerable to commercial development since it was well known that virgin forests contained the most valuable timber.

The forest sites located on Crown land were dispersed across the Province as follows:

Site	County	Crown (hectares)	Private (hectares)
Shulie River	Cumberland	31	0
Chignecto	Cumberland	31	0
Fenwick	Cumberland	30	44
Black River Road	Cumberland	23	0
Economy River	Colchester	46.5	31.5
Piper Glen	Inverness	13	14
Lake O'Law	Inverness	35	0
Second Fork Brook	Victoria	58	0
French River	Victoria	18	71
Oregon	Victoria	19	0
South Maitland	Hants	74	74
Hollohan Lake	Lunenburg	4	0
Shelburne River	Queens	7.5	54.5
Silvery Lake	Shelburne	8	0
Shelburne Barrens	Shelburne/ Yarmouth	5540	113
Quinan Lake	Yarmouth	536	0
Birch Lake	Digby	154	8
Sporting Lake	Digby	32	0

Quinan Lake was subsequently reconstituted as two separate and distinct sites, Great Barren Lake and Quinan Lake Mixed Forest.

Birch Lake was subsequently deleted from the Candidate Ecological Reserve list and replaced by Big Pine Lake.

Sporting Lake has since been designated as an Ecological Reserve under the Special Places Protection Act.

Role of the Department of Lands and Forests

Since 1975, the Department of Lands and Forests has accepted responsibility for ensuring to the extent possible that ecological sites recommended in the IBP report are left in an undisturbed state until they have been officially designated under the Special Places Protection Act.

The Deputy Minister of the Department, Mr. R. H. Burgess, issued the following memorandum to all Coordinators, Directors and Managers of Operations in May, 1975:

> "Attached please find a letter from Mr. L. S. Hawboldt [Department of Lands and Forests] dated February 17, 1975, to myself containing recommendations on an Ecological Reserve program for Nova Scotia as outlined in a report of the Maritimes submitted to the Province in 1974. A list of the IBP-CT sites recommended in Nova Scotia is included. This shows which sites are Crown, or partly Crown, both federal and provincial.
>
> A complete set of maps with the sites sketched in for the Province is being sent to each of the Coordinators and Directors. A set pertaining to their respective sub-divisions is being sent to each of the Managers, Forest Resources.
>
> I am requesting that no development work be undertaken in these areas, and that any development which may have been started be stopped. Should there be similar areas which might be set aside as Ecological Reserves, please include them for no, or restricted, development. [Emphasis added]
>
> This is an interim measure until national and provincial legislated programs define more clearly the requirements for such areas, including which areas are to be protected, protection responsibilities, funding and other guide lines.

> Should the opportunity to acquire sites not owned, or only partly owned, by the Crown arise, you are requested to recommend purchase in the customary manner. This applies to potential sites not included on the list." [Emphasis added]

The Deputy Minister's memorandum to administrative and operational staff of the Department of Lands and Forests is clearly consistent with the recommendations of the IBP-CT report of 1974 as these relate to the Province of Nova Scotia.

It should be noted that the responsibility of the Department of Lands and Forests did not extend beyond sites located on Crown land and did not include sites on private property.

Damage On Candidate Ecological Reserves

The Wilderness Committee of the Ecology Action Centre was prompted to protest publicly in August 1990, when members became aware of a report on the state of candidate ecological reserves located on Crown land. The report (which had been submitted to the Advisory Committee on the Protection of Special Places) consisted of brief summaries of individual site surveys carried out by field staff of the Department of Lands and Forests at various times since 1981.

Members of the Wilderness Committee were dismayed to discover that, while most of the sites were reported to be intact, several were described as having been cut. The sites which had been damaged or destroyed were Black River Road ("clear-cut"), Economy River ("most of the area was cut over"), Lake O'Law ("partially cut"),Quinan Lake ("largely cut over"), and Birch Lake ("clear-cut").

Members of the Wilderness Committee were understandably disturbed when they read these comments and assumed that government officials were to blame for having allowed cutting to take place.

On investigation, the Ombudsman found the circumstances in each case to be as follows:

1) Birch Lake When the Deputy Minister's memorandum of May 1975, was circulated within the Department of Lands and Forests, this area in Digby County was under lease to Alwood Products Ltd. of Yarmouth, and permission to harvest had already been granted. Cutting had not yet begun, but the company had invested considerable sums of money in the construction of access roads. In accordance with the Deputy Minister's instructions, development work in this area was suspended while field staff of the Department searched for an acceptable alternative site. They succeeded in locating such a site on Big Pine Lake. It was considered to be equal, if not superior, in every respect to the one on Birch Lake. Senior staff of the Department personally inspected the area and subsequently recommended that it be substituted for the original site. This recommendation was approved by the Ecological Reserve Committee of the Department and the harvesting operation of Alwood Products was then allowed to proceed. In 1990, in response to a request from the Nova Scotia Museum, the site was expanded to include the lake itself.

2) Quinan Lake This was a large site in Yarmouth County which, at the time of the IBP study, was also under lease to Alwood Products. When the visit of the IBP team took place, access roads had been constructed, cutting operations were underway, and large portions of the site had already been harvested. Thus, field staff of the Department of Lands and Forests were later surprised to find that this site had been included in the Deputy Minister's memorandum.

3) Black River Road This site is located in Cumberland County near the town of Oxford. In 1973, the area was thinned as part of an experimental silviculture program sponsored by the Atlantic Regional Development Agency. In 1975 and 1976, virtually all of the old-growth pine trees were blown down in gales. Consequently, the site no longer served its original purpose and was not considered a candidate for ecological reserve status thereafter. Cutting which took place was part of a salvage operation following the storms.

4) Economy River This site is located on high ground in the Cobequid Mountains north of Economy. It is relatively inaccessible and there seems to have been some confusion from the beginning in regard to its exact location and boundaries. In 1974, part of the site was on Crown land and part was under the private ownership of the Riversdale Lumber Company. That part of the site on private property was harvested in the 1960's and early 1970's. According to the most recent report (August 1990) the portion of the site located on Crown land remains intact. Reports of clear cutting apparently referred to those parts of the site on private lands.

5) Lake O'Law A careful inspection of this area located in Inverness County was carried out in August, 1990. It confirmed that no portion of the site identified by the IBP team in 1974 had been cut. Confusion in regard to this site may have arisen because areas on an adjacent plateau were salvaged following a budworm infestation.

Ecological Reserves in the Future

The rate at which old-growth forests on Crown land in Nova Scotia have been designated as ecological reserves has been extemely slow.

In the ten-year period since the Special Places Protection Act was passed in 1980, only two sites on Crown land have been proclaimed as reserves.* In the same period the Province did not purchase any sites located on private land.

This slow rate of progress has been due chiefly to lack of funds and staff. The Nova Scotia Museum employs one person who is responsible for all special places, including historical, palaentological, archaeological, and ecological. Clearly, that person can devote only a small part of his time and effort to the designation of old-forest sites, a process which involves the determination of exact boundaries, compilation of a detailed description, and formulation of an appropriate management plan for each site before it can be proclaimed under the Act.

Most of the original IBP sites, and those identified since 1974, have yet to be established as protected reserves, and will continue to be at some risk until such time as they have been properly marked and regulated under the Act. Several sites in particular may suffer damage as a result of forestry operations, commercial development and/or recreational activity.

This unfavourable situation is not likely to improve until the ecological reserve program has been assigned a higher priority and allocated the staff resources necessary for successful completion.

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* The record is much the same in New Brunswick. In that Province only two sites have been proclaimed since the Ecological Reserves Act was passed in 1975.

Conclusions

1. Two sites located on Crown land (Economy River and Lake O'Law) are still intact.

2. The Black River Road site was damaged beyond recovery in high winds.

3. The Quinan Lake site had already been largely cut at the time of the IBP-CT survey.

4. The Department of Lands and Forests exercised reasonable discretion when a superior site (Big Pine Lake) was substituted for one recommended in the IBP-CT report (Birch Lake).

5. The Department of Lands and Forests properly fulfilled its responsibility in regard to the protection of those candidate ecological reserves referred to above.

6. The rate at which old-growth forests on Crown land have been designated as ecological reserves has been extremely slow.

7. The Province has not acquired any recommended sites located on private property since the Special Places Protection Act was passed in 1980.

8. Most of the sites located on Crown land and private property have yet to be designated as ecological reserves and some in particular will continue to be at some risk until such time as they have been properly marked and regulated under the Special Places Protection Act.

9. There is a distinct possibility that some parts of an irreplaceable natural heritage will be lost forever unless the ecological reserve program is assigned a higher priority.